

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Acceleration of Broadband Deployment)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of)	
Broadband Deployment by Improving Policies)	
Regarding Public Rights of Way and Wireless)	
Facilities Siting)	

COMMENTS OF TOWN OF WESTLAKE, TEXAS

The Town of Westlake, Texas files these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. Through these comments, the Town of Westlake, Texas, seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices and charges.¹ The Commission should not interfere with these local policies here. Westlake, Texas has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. We believe that a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission’s limited expertise on local land use matters all point to the same conclusion: this is no place for federal regulation.

¹ We use the term “charges” to include both any cost recovery that is part of right-of-way and facility management (such as permitting fees), as well as other compensation we may receive from communications companies for use of the rights-of-way and other facilities consistent with state and local law.

Westlake, Texas has successfully managed its property to encourage deployment of several broadband networks to date. As a result, broadband service is available to nearly 100% of the households and businesses in our jurisdiction. There is no evidence that our policies or charges with respect to placement of facilities in the rights-of-way or on City property (such as water towers) have discouraged broadband deployment. Our community *welcomes* broadband deployment, and our policies allow us to work with any company willing to provide service. No company has cited our policies as a reason that it will not provide service. We believe our policies have helped to *avoid* problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. Our right-of-way permitting process is simple, well coordinated, and quick in terms of turn-around time for all applicants. On the other hand, we also know that many entities seeking access to our rights-of-way and facilities would prefer to live without rules or regulations, to the great detriment of other users, including other broadband service providers, abutting landowners, commuters, and the general taxpayer.

The Town of Westlake has installed a community wide duct bank that facilitates the installation of broadband fiber optic cable for telecommunication providers. This duct bank has encouraged broadband deployment through easy coordination and smooth installation of broadband fiber optic cable, as well as easy accessibility of broadband service for the entire community without disruption to other infrastructure in our rights-of-way, minimizes need for utilizing valuable private property for broadband placement, or duplication of service.

In response to the NOI, Town of Westlake, Texas provides the following information:

I. *Application Procedures, Forms, Substantive Requirements, and Charges.*

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.²

The Town of Westlake, Texas applies the following right-of-way management and facility placement procedures: Our right-of-way procedures are available on the Town's web site at <http://westlake.kisi.com/en/PermitsCommerical.html> or at the Town offices. Our procedures simply require a Right-of-Way Construction Permit that we require anyone working within Town right-of-way to complete. Subject to approval by the Town staff (to ensure no accidents or interference with other users occurs) and issuance of the permit, the applicant can then work in the right-of-way with proper coordination with the Town and other utilities and telecommunication companies which have facilities in this same right-of-way. Additionally, the Town's right-of-way regulations are contained in the Town's Municipal Code of Ordinances which are available on the Town's web site at: http://westlake.kisi.com/en/muni_code.html Specifically, Chapter 78, Streets & Sidewalks, Section 78-33 of this Code of Ordinances, which is available on-line on the Town's web site, sets out right-of-way permit requirements.

II. *Sources of Delays.*

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications.³

In Westlake, Texas, without exception, all applications for use of Town right-of-way are processed very quickly. If there is a coordination issue, the Town is able to work these out quickly, facilitated in part because of the permit requirement and because the Town has a duct

² NOI ¶ 14.

³ *Id.*

bank for location of fiber optic lines. At times we have had providers locate in our rights-of way without going through the Town's permitting process. Even then, once the Town is aware of this, we work quickly to resolve the coordination issue with regard to such locations. This process has been advantageous for the providers because this permit application and coordination process has presented inadvertent damage to existing broadband providers fiber optic lines when someone uses Town right-of-way without first obtaining a permit.

III. *Improvements.*

The Commission asks whether there are particular practices that can improve processing.⁴

Westlake, Texas has recognized and implemented a number of practices that have improved and facilitated use of Town rights-of-way for broad band providers. As stated above, all of the Town's permit and right-of-way use regulations are available on-line on the Town's web site. We quickly process all right-of-way permit applications. We are open to and encourage "single dig"/joint trenching procedures: however, to date broadband providers operating in our Town have not been willing to utilize this process. Where necessary we coordinate with adjacent communities. We encourage broadband providers to make sure all subcontractors they use are aware of local application processes. If broad band providers would be diligent in making their subcontractors aware of the requirement to obtain right-of-way permits, this would allow for even further user-friendliness and effectiveness for a municipality coordinating use of its rights-of-way.

⁴ NOI ¶¶ 14, 29.

IV. Permitting Charges.

The Commission seeks data “on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees.” Specifically, the Commission asks commenters to identify:

- the type of facilities for which such charges are assessed;
- how such charges are structured (e.g., per foot or percent of revenue in the case of rights of way fees);
- whether the community is subject to comprehensive state franchising or rights-of way-laws;
- whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and
- the value of any in-kind contributions required for access or permit approval.

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.⁵

In Westlake, Texas we have to date, not charged for right-of-way use permits. Westlake, Texas has charged lease fees to broadband providers for use of the Town’s duct bank, but these fees simply cover the duct bank’s construction costs. We have worked with a wireless provider for their installation of wireless facilities on our water tower, but have allowed our water tower to be used at no charge for this purpose in exchange for receiving free wireless Internet service at the Town owned charter school located nearby.

⁵ NOI ¶ 17.

V. Local Policy Objectives.

The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area.⁶

In Westlake, Texas, our policies are designed to achieve the following:

following—and add additional—as appropriate: facilitate the responsible deployment of services; make the services broadly available; ensure public safety; avoid traffic disruption; maintain and repair roadways; prevent public disruption and damage to abutting property; minimize accelerated deterioration to roads that accompanies street cuts; satisfy aesthetic, environmental, or historic preservation concerns; avoid damage to the property of others; obtain fair compensation for use of public property]

VI. Possible Commission Actions.

Finally, the Commission asks what actions the Commission might take in this area.⁷

As noted above, the Town of Westlake, Texas strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may actually make it infeasible to continue to maintain or provide important public services. If the Commission feels compelled to act in this area at all, it should limit itself

⁶ NOI ¶ 22.

⁷ NOI ¶ 36.

to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

CONCLUSION

The Town of Westlake, Texas urges the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. As indicated above, in Westlake, Texas, our policies and procedures are designed to protect important local interests, and in fact, facilitate broad band deployment in our community, and have done so for many years. There is no evidence that these policies have impaired any company from providing broadband service here, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Respectfully submitted,

Town of Westlake, Texas

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